

Item 8: Kent and Medway NHS and Social Care Partnership Trust: Foundation Trust Application. Background Note.

By: Tristan Godfrey, Research Officer to the Health Overview and Scrutiny Committee

To: Health Overview and Scrutiny Committee, 13 April 2012

Subject: NHS Trust and NHS Foundation Trust Status

1. Foundation Trusts (FTs)

- (a) Foundation Trusts are independent public benefit organisations but remain part of the NHS. They are accountable to Parliament as well as the local community. They have a duty to engage with their local community and encourage local residents, staff and service users to become members. Members can stand for election to the board/council of governors.
- (b) The council of governors is drawn from various constituencies, with members either elected or appointed by that constituency. It works with the board of directors, which has the responsibility for day-to-day running of the FT.¹
- (c) As things currently stand, there are a number of differences between NHS Trust and NHS Foundation Trust status. One of the areas of difference is around financial duties:
 1. NHS Trusts have a duty to break even, meaning that their expenditure must not exceed their income, taking one financial year with another. Spending on capital and cash held must be within certain limits.
 2. FTs are not statutorily required to break even, but must achieve the financial position set out in their financial plan. One main measure of an FT's financial performance is EBITDA (earnings before interest, tax, depreciation and amortisation).²

2. The Foundation Trust Pipeline

- (a) The NHS Operating Framework for 2012/13 provides the following summary of the FT Pipeline:

¹ Monitor, *Current practice in NHS foundation trust member recruitment and engagement*, 2011, <http://www.monitor-nhsft.gov.uk/sites/default/files/Current%20practice%20in%20foundatio...ecruitment%20and%20engagement.pdf>

² Academy of Medical Royal Colleges and Audit Commission, *A Guide to Finance for Hospital Doctors*, July 2009, p.23, <http://www.audit-commission.gov.uk/health/audit/financialmgmt/hospitaldoctors/Pages/hospitaldoctors9jul2009.aspx>

“Progress on the NHS Foundation Trust (FT) pipeline is not an end in itself but a critical means for creating clinically and financially sustainable organisations across the provider sector. NHS trusts are expected to achieve NHS FT status on their own, as part of an existing NHS FT or in another organisational form by April 2014, with a few concluding beyond this date by exceptional agreement. Plans for all NHS trusts have been agreed under Tripartite Formal Agreements (TFAs), which codify the locally owned issues, actions and processes and set out the journey each organisation must take going forward.”³

(b) Since October 2010, the Department of Health has been developing new processes to assist aspirant Trusts towards authorisation. The completions of a ‘tripartite formal agreement’ (TFA) for each Trust has been a core element of this with the TFA summarising the main challenges faced by each organisation along with the actions to be taken by the Trust, SHA and Department of Health.⁴ Any issues were put into four categories:⁵

- Financial;
- Quality and Performance;
- Governance and leadership; and
- Strategic issues.

(c) As of 30 January 2012 there are 140 FTs. Across England, this accounts for around 57% of acute, 73% of mental health and 27% of ambulance trusts.⁶

(d) Across the South East Coast region, 50% of Trusts have been authorised as Foundation Trusts.⁷ In Kent and Medway, the Foundation Trusts are currently:

- East Kent Hospitals NHS University Foundation Trust;
- Medway NHS Foundation Trust; and

³ Department of Health, *The Operating Framework for the NHS in England 2012/13*, 24 November 2011, p.29, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131428.pdf

⁴ National Audit Office, *Achievement of foundation trust status by NHS hospital trusts*, Full report p.6, 13 October 2011, http://www.nao.org.uk/publications/1012/foundation_trusts.aspx

⁵ Ibid., p.21. All TFAs can be accessed here: <http://healthandcare.dh.gov.uk/foundation-trusts-tripartite-formal-agreements/>

⁶ Monitor, *140th foundation trust authorised by Monitor*, 1 November 2011, <http://www.monitor-nhsft.gov.uk/home/news-events-and-publications/latest-press-releases/140th-foundation-trust-authorised-monitor>

⁷ NHS South East Coast, *Provider Development Update*, Board Papers 28 September 2011, <http://www.southeastcoast.nhs.uk/Downloads/Board%20Papers/28%20September%202011/71-11%201%20Provider%20Development%20update%20Sept%202011.pdf>

- South East Coast Ambulance Service NHS Foundation Trust

3. Monitor and the NHS Trust Development Authority (NTDA)

- (a) Monitor is the independent regulator of NHS Foundation Trusts and is directly accountable to Parliament.
- (b) The three main strands to its work are currently:
1. Assessing the readiness of Trusts to become FTs;
 2. Ensuring FTs comply with their terms of authorisation and that they are well governed and financial robust; and
 3. Supporting FT development.⁸
- (c) A number of changes to the role of Monitor have been proposed as a result of the NHS White Paper, *Equity and Excellence: Liberating the NHS*, and the passage of the Health and Social Care Bill through Parliament (the Bill received Royal Assent on 27 March 2012⁹). It will become the sector regulator for health (and potentially for social care at a later date), licensing providers of NHS services and carrying out functions in the following three areas:
1. Regulating prices;
 2. Enabling integration and protecting against anti-competitive behaviour; and
 3. Supporting service continuity.¹⁰
- (d) Monitor will maintain its oversight role of Foundation Trusts until 2016 (or two years following authorisation if this is later) when the role will be reviewed.¹¹
- (d) The establishment of the NTDA will involve bringing together a number of functions currently carried out by the DH, SHAs and Appointments Commission. Its core functions will be:

⁸ Monitor, *What we do*, <http://www.monitor-nhsft.gov.uk/home/about-monitor/what-we-do>

⁹ Health and Social Care Act, House of Parliament, <http://services.parliament.uk/bills/2010-11/healthandsocialcare.html>

¹⁰ Monitor, *The Health and Social Care Bill: Monitor's Evolving Role*, 10 October 2011, [http://www.monitor-nhsft.gov.uk/sites/default/files/The%20Health%20and%20Social%20Care%20Bill%20-%20Monitor's%20evolving%20role%20\[Information%20sheet\]%2010%20October%202011.pdf](http://www.monitor-nhsft.gov.uk/sites/default/files/The%20Health%20and%20Social%20Care%20Bill%20-%20Monitor's%20evolving%20role%20[Information%20sheet]%2010%20October%202011.pdf)

¹¹ Ibid., and Monitor, *Assessing and regulating NHS foundation trusts*, <http://www.monitor-nhsft.gov.uk/home/monitors-new-role/assessing-and-regulating-nhs-foundation-trusts>

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1. Performance management of NHS Trusts;
 2. Overseeing the FT pipeline;
 3. Assurance of clinical quality, governance and risk at NHS Trusts; and
 4. NHS Trust appointments, including Chairs and non-executives.¹²
- (e) The timeline is that the NTDA will be established as a Special Health Authority in June 2012, take on the functions of the Appointments Commission in October 2012 and be fully operational April 2013.¹³
- (f) A review of the continuing need for the NTDA is likely to take place in 2016.¹⁴

¹² Department of Health, *Building the NHS Trust Development Authority*, 5 January 2012, p.8, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_132049.pdf

¹³ *Ibid.*, pp.6, 19.

¹⁴ *Ibid.*, p.7.